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Romania: Breaking new ground – Romania introduces Group of Companies provisions

One of the most hotly debated topics in the insolvency world in the last few years has been the insolvency of the groups of companies.

Romania introduced an entire chapter on the insolvency of groups of companies in the major overhaul of the insolvency legislation that took place in the summer of 2014 i.e. Law no. 85/2014 on prevention of insolvency and insolvency proceedings.

Taking its inspiration from the UNCITRAL Legislative Guide on Insolvency – Part III, Treatment of Enterprise Groups in Insolvency, from the working papers drafted for the revision of the European Insolvency Regulation no. 1346/2000, from the CoCo Guidelines for Cross Border Insolvency, as well as from the World Bank Principles for Effective Creditor/Debtor Regimes, the Romanian freshly enacted approach provides for the procedural coordination system.

The provisions aim to enhance the creditors' recovery prospects, as well as of the debtors', mainly by a number of both substantial and formal rules.

- Definitions were introduced for the group of companies*, members of the group, joint insolvency application, cooperation obligations.
- The competent Court should be located on the territory of the Mother company or of the one with the largest turnover (a particular interpretation of the COMI rule).
- Each insolvency proceedings is managed in a separate Court file; however, a single judge, a single representative of the debtor in possession and a single insolvency practitioner should be appointed or, if that is not possible, they are bound by the obligation to cooperate; if the composition of the list of creditors allows, the Creditors' Committee should be the same in each proceedings.
- Whenever a single insolvency practitioner is not an option, the insolvency practitioner appointed for the Mother company or the one with the largest turnover will act as a coordinating administrator, based on a cooperation protocol signed with the other practitioners.
- The threshold for opening the proceedings for each member of the group is of 40,000 lei (approx. €9,000) for the debtor as well as for the petitioning creditor.
- The possibility, for members the group, of submitting a joint insolvency application was introduced.
- A non-insolvent member of the group may adhere to the joint insolvency application. In this case the approval of the shareholders is mandatory.
- A coordinated approach must be observed when submitting a restructuring plan.
- The effect of suing over voidable transactions between members of the group is analysed by the insolvency practitioners before taking a decision to proceed.
- In order to stimulate intra-group financing, the member of the group granting a loan to another member will have a recovery priority similar to other creditors which ensure the continuation of activity.

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As the provisions regarding the group of companies were so recently minted, there is no way to check how well they are functioning in real life yet. On the other hand, this type of provision requires the full cooperation and good will of the participants in order to succeed. Therefore, while I am confident these new rules respond to long standing needs, only time will tell whether the response is also effective.

* The group of companies is understood to mean two or more companies interconnected by control and/or qualified shareholding, where qualified shareholding is the ownership of a participation of 20% to 50% in another company.